

Administrator by section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), which in turn has been delegated to the Director of EPA Region 9's Enforcement Division.

4. EPA and the Respondent enter into this Consent Order voluntarily. Respondent agrees not to contest EPA's authority or jurisdiction to issue this Consent Order in this or in any subsequent proceeding to enforce the terms of this Consent Order. This Consent Order constitutes an enforceable agreement between the Respondent and EPA.

5. EPA has primary enforcement responsibility under section 1414 of the SDWA, 42 U.S.C. § 300g-3, to ensure that this System complies with the requirements of the SDWA.

IV. DEFINITIONS

6. "Consent Order" shall mean this document, all attachments hereto, all subsequent modifications, and all submissions required by this Consent Order and approved by EPA.

7. "Day" shall mean a calendar day unless otherwise specified. In computing a prescribed period of time, the day of the event shall not be included.

8. "Maximum Contaminant Level" ("MCL") shall mean the maximum permissible level of a contaminant in water which is delivered to any user of a public water system, as further defined at 40 C.F.R. § 141.2.

V. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

9. Respondent Hopi is an "Indian Tribe" under section 104 of the Federally Recognized Indian Tribe List Act, 25 U.S.C. § 479a, and 81 Fed. Reg. 26826, 26828 (May 4, 2016), and thus a "municipality" within the meaning of section 1401(10) of the SDWA, 42 U.S.C. § 300f(10), and also a "person" within the meaning of section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 142.2.

10. The System provides water for human consumption through pipes and has two (2) service connections and therefore meets the definition of a “public water system” in section 1401(4) of the SDWA, 42 U.S.C. § 300f(4).

11. EPA considers the System a “non-transient non-community water system,” as defined at 40 C.F.R. § 141.2, because it regularly served at least twenty-five (25) of the same persons over six (6) months per year. EPA previously considered the System a “transient non-community water system” but reclassified the System in July 2013.

12. The System’s source of drinking water is groundwater.

13. Respondent owns and operates the System and thus meet the definition of a “supplier of water” provided in section 1401(5) of the SDWA, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. As a “supplier of water,” Respondent must comply with the requirements of Part B of the SDWA, 42 U.S.C. § 300g *et seq.*, and its NPDWRs.

Arsenic MCL Requirements

14. Systems which exceed the arsenic MCL are required to monitor quarterly beginning in the next quarter after the violation occurred. 40 C.F.R. § 141.23(c)(7).

15. Groundwater systems are to take a minimum of one (1) sample at every sampling point. 40 C.F.R. § 141.23(a)(1).

16. The MCL for arsenic is 0.010 mg/L, or 10 parts per billion (ppb). 40 C.F.R. § 141.62(b).

Violations of Arsenic Monitoring Requirements

17. Table 1 provides a summary of Respondent’s arsenic monitoring sampling and analytical data as submitted to EPA.

TABLE 1 – HISTORY OF ARSENIC MONITORING RESULTS

Year	Quarter	Arsenic Level (ppm)	Running Annual Average (ppm)
2013	Q3 (July-September)	FTM*	No RAA**
2013	Q4	0.014	No RAA
2013	Q4	0.095	No RAA
2014	Q1	FTM	No RAA
2014	Q2	FTM	0.054
2014	Q3	FTM	0.095
2014	Q4	0.012	0.012

* Failure to Monitor (FTM).

** No RAA because four calendar quarters had not transpired. No running annual average was available as no data were reported during the last four quarters.

18. Respondent's failure to monitor in three (3) quarters between Q1 2014 and Q3 2014 following violations of the Arsenic MCL, as shown in Table 1, violated the quarterly monitoring requirements of 40 C.F.R. § 141.23(c)(7).

Violations of Arsenic MCL

19. Pursuant to 40 C.F.R. § 141.23 (i)(1), compliance at a public water system conducting arsenic monitoring at a frequency greater than annually is determined by the running annual average ("RAA"). If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. If a public water system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples actually collected.

20. Since at least the 2nd quarter of 2014, Respondent violated the arsenic MCL of 0.010 mg/l based on the RAA of the available analytical results of arsenic sampling provided above in Table 1.

21. Respondent's violation of the arsenic MCL has continued into at least the fourth quarter of 2014, as shown in Table 1 above.

VI. COMPLIANCE PROVISIONS

Based on the foregoing findings and pursuant to its authority under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), Respondent agrees and is hereby ORDERED to conduct the following activities:

22. **Letter of Intent:** No later than thirty (30) days of this Consent Order's Effective Date, Respondent must transmit to EPA a letter describing its intention to comply with this Consent Order and summarizing any steps already taken by Respondent to comply with this Consent Order, the SDWA, and its implementing regulations at 40 C.F.R. Part 141.

23. **Compliance Plan:** No later than sixty (60) days of this Consent Order's Effective Date, Respondent must submit to EPA for its review and approval a draft written compliance plan ("Compliance Plan") that describes in detail the steps and schedule Respondent will follow to return its System to compliance with the arsenic MCL, the arsenic monitoring requirements, and any applicable public notice requirements by the compliance deadlines set forth in this Consent Order.

24. **Compliance with the Arsenic MCL:** Upon approval by EPA, Respondent shall implement its Compliance Plan expeditiously and achieve and demonstrate compliance with the arsenic MCL based on the running annual average no later than June 15, 2020.

25. **Continuous Compliance with the Arsenic MCL:** Following Respondent's initial compliance with the arsenic MCL, Respondent shall maintain continuous compliance with the arsenic MCL for all water the System serves to its customers for human consumption.

26. **Implementation of Interim Priority Actions:** Within one-hundred eighty (180) days of the Effective Date of this AOC, Respondent shall install a Point of Use/Point of Entry at the Hopi Cultural Center System. Additionally, within five (5) days of the Effective Date,

Respondent shall provide hotel guests with at least two 16-ounce bottles of water per guest per day. Respondent shall not be required to provide hotel guests with bottled water once the hotel demonstrates compliance with the arsenic MCL based on the running annual average.

27. **Sampling and Analysis:** Respondent shall immediately comply with the arsenic sampling and monitoring requirements on a quarterly basis as required by 40 C.F.R. §141.23(c)(7). In addition, Respondent shall demonstrate its initial and continuous compliance with the arsenic MCL pursuant to its EPA-approved Compliance Plan by having its arsenic samples analyzed by an EPA-certified laboratory.

28. **Increased Arsenic Sampling and Analysis:** Respondent shall comply with any additional and/or more frequent arsenic sampling and analysis requirements determined necessary by EPA following written notice by EPA of any such requirements.

29. **Reporting of the Arsenic Sample Results:** Respondent shall ensure the analytical results of all its arsenic sampling, including any additional samples not required by this Consent Order that Respondent may choose to collect, are submitted to EPA within forty-five (45) days of the arsenic sampling event.

30. **Quarterly Progress Reports:** Respondent must submit written reports to EPA that describe Respondent's progress in implementing the approved Compliance Plan during the previous quarter. The first Quarterly Progress Report is due by December 9, 2016. Subsequent reports are due ten (10) days after the last day of every calendar quarter thereafter, *i.e.*, the second Quarterly Progress Report is due March 10, 2016. Respondent must submit Quarterly Progress Reports until otherwise directed by EPA or the termination of this Order.

31. **Quarterly Meetings:** Respondent must convene quarterly meetings (by teleconference or at a centralized meeting location) and invite meaningful parties, including, but not limited to, the

Hopi Water Resources Program, and the EPA Region 9 Enforcement Division and Office of Regional Counsel, to:

- a. Discuss the adequacy of Respondent's compliance with the Consent Order and the approved Compliance Plan;
- b. Establish any necessary managerial and governance protocols that will assist in Respondent's compliance with the Consent Order and approved Compliance Plan; and
- c. Discuss how to best promote long term and efficient drinking water compliance at the System and elsewhere in the Hopi Reservation.

The first meeting must be held at a date to be determined by Respondent in November 2016.

Invitations to this first meeting must be provided to meaningful parties at least thirty (30) days in advance. Subsequent meetings must be convened before the last week of the last month of every quarter thereafter. Respondent must ensure that facilities are provided to allow parties to join any meeting via teleconference.

32. Compliance with Public Notification Requirements: No later than forty-five (45) days of this Consent Order's Effective Date, Respondent must provide a Tier 2 public notice of its failure to conduct monitoring for arsenic, as well as its failure to meet the arsenic MCL. Respondent must comply with the public notice requirements applicable to "non-community water systems," as set forth in 40 C.F.R. § 141.203(c)(2) including posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, including the Hopi Cultural Center restaurant and hotel lobby, and any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice.

33. Delays: If any event occurs that causes or is likely to cause delay in the achievement of any requirement or time frame specified in this Consent Order, Respondent shall notify EPA in writing, within seven (7) business days of learning of such event, of the anticipated length and

cause of the delay, the measures Respondent has taken and/or to be taken to prevent or minimize the delay, and the timetable by which Respondent intends to implement these measures and achieve the requirement or meet the time frame. Respondent shall adopt all reasonable measures to avoid or minimize delay. Submittal of the notice to EPA required by this paragraph does not extend any deadline or time frame in this Consent Order.

34. **Additional Information:** Within fourteen (14) days of any request by EPA, Respondent shall submit to EPA such additional documents and information as EPA may reasonably request to determine Respondent's compliance with this Consent Order, the approved Compliance Plan, the arsenic MCL, or any other provisions of the NPDWRs.

35. All submittals to EPA made pursuant to this Consent Order must be accompanied by the following certification signed by Respondent's representative:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in such a manner to ensure that qualified personnel gathered and evaluated the information submitted. I certify that the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

36. Respondent must submit all information required under this Consent Order to:

Hillary Hecht
SDWA/FIFRA Enforcement Section
U.S. Environmental Protection Agency
75 Hawthorne Street (ENF-3-3)
San Francisco, CA 94105
Phone: (415) 947-4266
Fax: (415) 947-3519
E-mail: hecht.hillary@epa.gov

VII. GENERAL PROVISIONS

37. Respondent shall fully implement each item of this Consent Order and the Compliance Plan approved under this Consent Order in accordance with the schedules set forth therein.

Respondent's failure to fully implement all requirements of this Consent Order and the approved Compliance Plan in the manner and time period required shall be deemed a violation of this Consent Order.

38. Respondent's failure to comply with all of the requirements of the SDWA and 40 C.F.R. Part 141 may subject it to additional enforcement actions, including but not limited to judicial or administrative actions.

39. This Consent Order will not prohibit, prevent, or otherwise preclude EPA from taking whatever action(s) it deems appropriate to enforce the SDWA in any manner and will not prohibit, prevent, or otherwise preclude EPA from enforcing or using this Consent Order in subsequent administrative proceedings. Nothing in this Consent Order constitutes a waiver, suspension or modification of the requirements of the SDWA, or the rules and regulations promulgated thereunder, which remain in full force and effect. Issuance of this Consent Order is not an election by EPA to forgo any civil or administrative action otherwise authorized under the law.

40. Violations of any term of this Consent Order may subject Respondent to (i) a civil judicial penalty of up to \$37,500 per day per violation for each day in which a violation occurs, as assessed by the United States District Court, under sections 1414(b) and 1414(g)(3) of the SDWA, 42 U.S.C. §§ 300g-3(g)(3), and 40 C.F.R. 19.4, or (ii) an administrative penalty of up to \$32,500 after notice and opportunity for hearing, under section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(C).

41. This Consent Order does not relieve Respondent of any responsibilities or liabilities established pursuant to any applicable local, tribal, or federal law.

42. The provisions of this Consent Order are severable. If any provision of this Consent Order is found to be unenforceable, the remaining provisions will remain in full force and effect.

43. The provisions of this Consent Order are binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.

44. Providing false or misleading information may subject Respondent to civil or criminal enforcement, or both.

45. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review under Section 1448(a), 42 U.S.C. § 300j-7(a), of the SDWA.

46. This Consent Order may be modified by written agreement of the parties.

47. Respondent's undersigned signatory certifies to his authority to execute this Consent Order and to legally bind the Respondent to the terms of this Consent Order.

48. After one year of completing all conditions of this Consent Order, Respondent may request in writing that EPA terminate this Consent Order and such submittal shall include a discussion of why termination is appropriate. EPA shall either agree to the request and terminate this Consent Order, or reject the request and provide a written response to Respondent containing EPA's reasons for not terminating the Consent Order. EPA's decision not to terminate the Consent Order shall not foreclose Respondent's opportunity to make additional termination requests at a later date.

VIII. EFFECTIVE DATE

49. This Order shall become effective five (5) business days after signature by the EPA and will remain in effect until Respondent demonstrates compliance with the terms and conditions of this Consent Order and requests termination as set forth in Paragraph 48.

IT IS SO AGREED AND ORDERED:


For Respondent Hopi Tribe:



Herman G. Honanie
Tribal Chairman
Hopi Tribe

Date: 8/5/16

For U.S. Environmental Protection Agency – Region IX:



Kathleen H. Johnson
Director
Enforcement Division
U.S. Environmental Protection Agency – Region IX

Date: 8/9/16